

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	CRIMINAL NO. 14-118
	:	
	:	
JUSTIN MICHAEL CREDICO,	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

Rufe, J.

November 10, 2016

Defendant Justin Michael Credico is charged with making threats to law enforcement officers and their families in violation of 18 U.S.C. §§ 115(a)(1)(A) and (B). On October 26, 2016, at Defendant's request, the Court reopened a hearing pursuant to *United States v. Starks*¹ to assess the accuracy and authenticity of recorded voicemail messages the Government proffers for use at trial. The initial *Starks* hearing occurred on July 2 and August 13, 2015 but was reopened so that the parties could address the recent revelation that the recordings at issue had been created using a cassette tape rather than a computerized system. Upon consideration of the evidence presented at the reopened *Starks* hearing, and for the reasons stated below, the Court holds that the government has satisfied its burden of proof under *Starks*.

I. FACTUAL AND PROCEDURAL HISTORY

On March 11, 2014, a grand jury in this District returned a four-count Indictment against Defendant: Count One, threats to a law enforcement officer (identified as FBI Special Agent #1) in violation of 18 U.S.C. § 115(a)(1)(B); Count Two, threats to the wife of FBI Special Agent #1 in violation of 18 U.S.C. § 115(a)(1)(A); Count Three, threats to a law enforcement officer

¹ 515 F.2d 112, 122 (3d Cir. 1975).

(identified as FBI Special Agent #2) in violation of 18 U.S.C. § 115(a)(1)(B); and Count Four, threats to the daughter of FBI Special Agent #2 in violation of 18 U.S.C. § 115(a)(1)(A). The Indictment alleges that Defendant engaged in a pattern of harassment of agents in the FBI's Philadelphia office culminating in messages left on or about February 4, 2014 in the voicemail box of FBI Special Agent #1 that contained threats against FBI Special Agent #1, FBI Special Agent #1's wife, FBI Special Agent #2, and FBI Special Agent #2's daughter.

At the initial *Starks* hearing in 2015, the government produced FBI Special Agent Joshua Hubiak, who stated that he produced the CD containing the voicemail recordings.² Agent Hubiak testified that all of the original voicemail messages had been forwarded from the voice mailbox of FBI Special Agent #1 (who was identified at the hearing as Special Agent Joseph Milligan) to a system known as ITACC. Agent Hubiak further testified that, using ITACC, he had copied these messages onto a CD, which the government intended to introduce into evidence and play for the jury at trial.³

The government also produced FBI Special Agent Joseph Carpenter, who interrogated Defendant following his arrest on February 12, 2014.⁴ Agent Carpenter testified that Defendant stated on that day that he had recently called Agent Milligan to challenge him to a boxing match and to urge him to sign a waiver so that Defendant could kill him during the fight without being held legally responsible.⁵ Agent Carpenter produced a handwritten statement that Defendant made during the interrogation, discussing the waiver and his animus against Agent Milligan. Some of the recordings mentioning the waiver were then played for Agent Carpenter, and Agent

² Hr'g Tr., August 13, 2015, at 30.

³ *Id.* at 22:21-23:3.

⁴ *Id.* at 84:15-23.

⁵ *Id.* at 88:8-21.

Carpenter identified the voice in the recordings as Defendant's.⁶ Additionally, the government presented Nigel Truman, a telecommunications engineer knowledgeable about the voicemail system, and Patrick Bowens, an FBI agent with extensive experience using the ITACC system.

Defendant, who was at the time representing himself *pro se*, then testified. On cross-examination, Defendant acknowledged that at least one of the recordings was accurate, and identified his own voice on multiple recordings. However, he claimed that some of recordings had actually been made in 2012—rather than in 2014 as the government alleged—and that some recordings had been altered, although precisely how the recordings had allegedly been altered was unclear.⁷ At the end of the hearing, the Court ruled that Defendant could no longer represent himself because of his inappropriate behavior and appointed attorney Riley H. Ross, III, to represent him. Based on the testimony presented at the 2015 hearing, the Court concluded that the government had met its burden under *Starks* to show the authenticity and accuracy of the recordings.⁸

On October 8, 2016, Defendant filed a motion in limine to preclude introduction of the recordings or, in the alternative, to reopen the *Starks* hearing, based on the findings of a defense expert. The Court granted the motion to the extent it requested a reopening of the hearing.

At the reopened hearing on October 26, 2016, the government presented two witnesses. First, Special Agent Joseph Milligan testified that he heard the threats when he received them on his voicemail.⁹ He stated that he and another agent recorded the threats from the voicemail system using a cassette tape recorder so that he could take the threats to the U.S. Attorney's

⁶ *Id.* at 104:22-105:5.

⁷ See *id.* at 122 (denying making certain calls in 2014 but stating “[t]hose other 2012 calls, yeah, definitely made those, most definitely”); 129-30 (admitting that he left message #4, though asserting that it was left in 2012 rather than 2014).

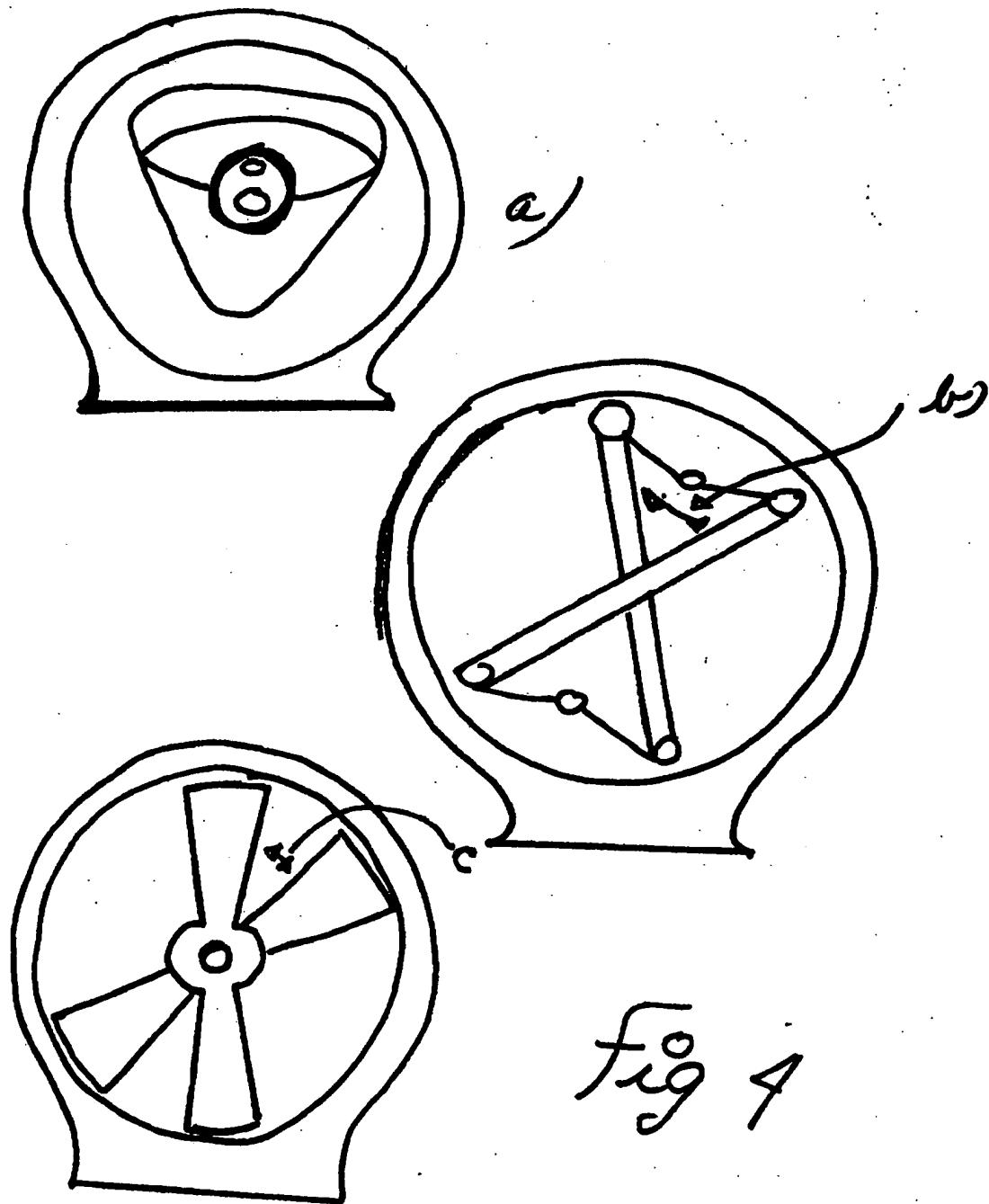
⁸ See Doc. No. 131.

⁹ *Tr. 10/26/2016* at 185-6.

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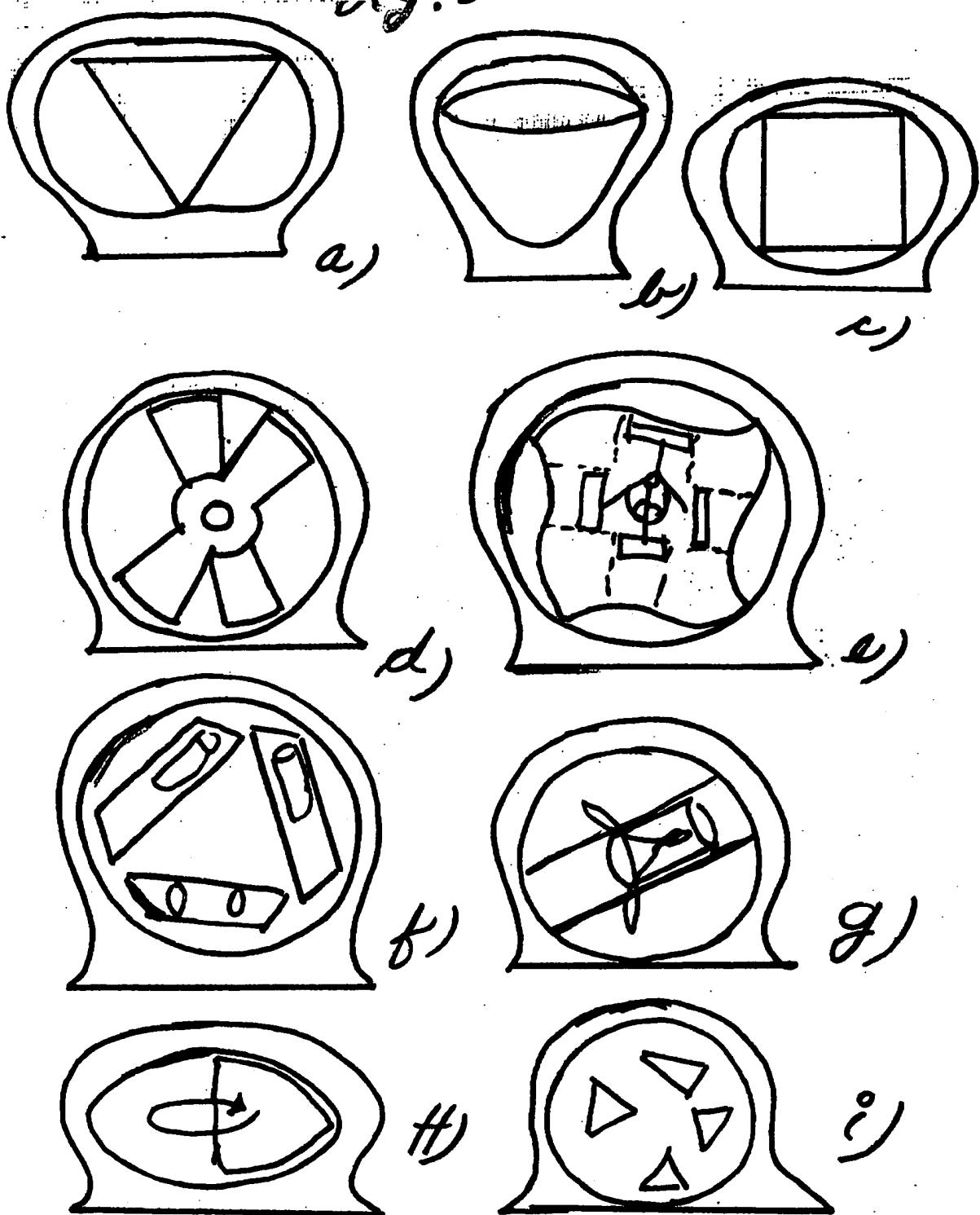
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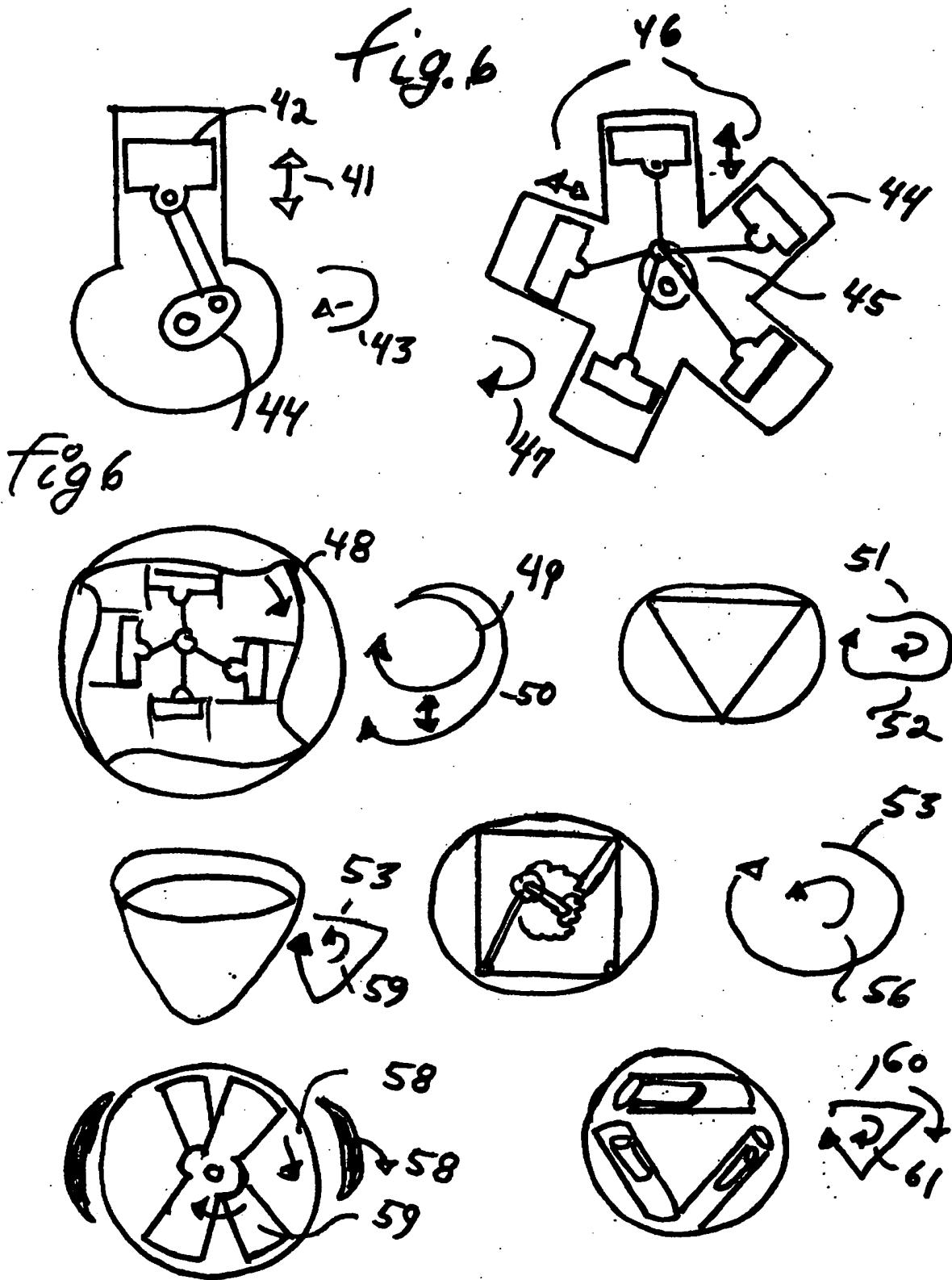
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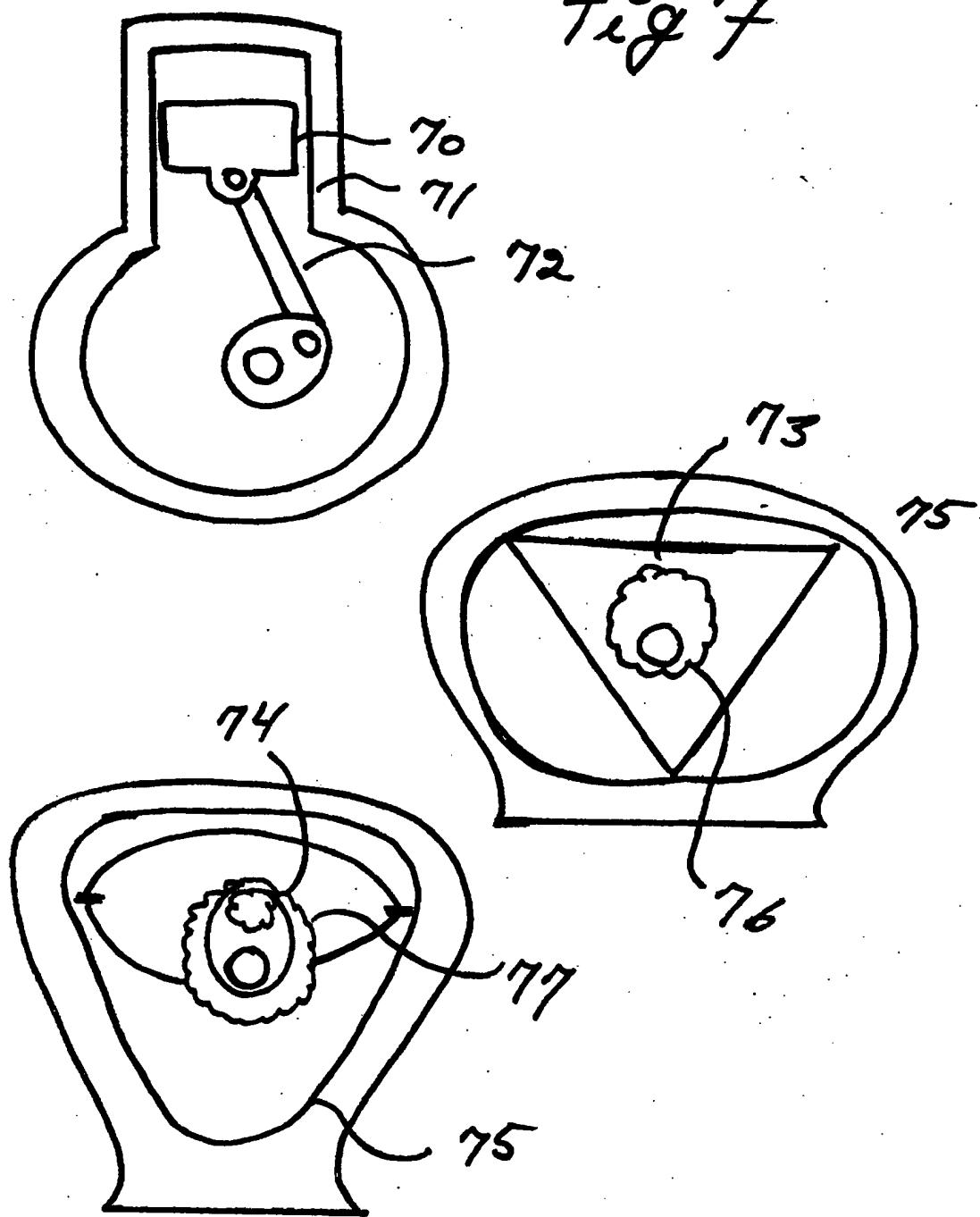
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Fig 7



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